

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TROY J. MOODY)	
Claimant)	
VS.)	
)	Docket No. 247,106
FARMERS COOP EQUITY COMPANY)	
Respondent)	
AND)	
)	
FARMLAND INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the October 13, 2000, Award of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded a functional impairment of 15 percent to the body as a whole after a 5 percent preexisting impairment was deducted pursuant to K.S.A. 1998 Supp. 44-501(c). The Appeals Board heard oral argument on March 9, 2001.

APPEARANCES

Claimant appeared by his attorney, Robert R. Lee of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Jeffrey E. King of Salina, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

What is the nature and extent of claimant's injury? The parties agree that, as claimant has returned to full-time comparable-wage employment with respondent, the issue before the Board deals with claimant's functional impairment and what, if any, preexisting impairment should be deducted from that functional impairment pursuant to K.S.A. 1998 Supp. 44-501(c).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It was stipulated claimant met with personal injury by accident arising out of and in the course of his employment on October 15, 1998, when he fell off the roof of a building after an extension ladder gave way. Claimant fell approximately 14 feet, landing partially on the ladder and suffering a serious injury to his low back. Claimant had experienced low-back problems off and on for approximately 15 years.

Claimant had been referred to orthopedic surgeon Ian S. Kovach, M.D., for treatment. Dr. Kovach ordered physical therapy and recommended a course of epidural steroids. These proved unsuccessful, and claimant underwent a two-level fusion in his lower back from L4 to the sacrum on April 1, 1999. The surgery performed by Dr. Kovach proved to be fairly successful, and claimant's symptoms improved.

Three physicians testified in this matter regarding what, if any, permanent functional impairment and what, if any, preexisting impairment claimant had as a result of these injuries. Pedro A. Murati, M.D., a physiatrist hired by claimant to perform an examination and provide an impairment rating, assessed claimant a 25 percent impairment based upon the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, range of motion model. Dr. Murati went on to state that claimant had a 5 percent impairment preexisting which resulted in a 21 percent impairment from this injury after using the combined values chart in the Guides.

Dr. Kovach utilized the functional capacities evaluation he had earlier ordered in assessing claimant a 19 percent functional impairment to the body as a whole. He opined 7 percent preexisted, resulting in a 13 percent functional impairment to the body as a result of this injury. Dr. Kovach also utilized the AMA Guides, Fourth Edition.

As a result of the dispute between the two doctors, the Administrative Law Judge referred claimant to C. Reiff Brown, M.D., an orthopedic surgeon, for a court ordered independent medical examination. Dr. Brown opined claimant had suffered a 15 percent impairment of function to the body as a whole, of which 5 percent preexisted, as a result of the work-related injuries to his back.

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of fact is not bound by the medical evidence presented in a case but, instead, has the responsibility of making its own determination. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

The Administrative Law Judge, in considering the opinions of the three physicians, found none to be so incredible or unreliable as to be disregarded. In considering all three, the Administrative Law Judge found claimant had suffered a 20 percent impairment to the body as a whole on a functional basis, of which 5 percent preexisted, resulting in a 15 percent general disability award.

Here, the medical evidence does not sustain the opinion of any one of the physicians over the others. The Appeals Board finds that claimant's impairment lies somewhere between the opinions of the three experts. Therefore, the Appeals Board adopts the findings of the Administrative Law Judge that claimant has sustained a 20 percent functional impairment to the body as a whole.

Additionally, K.S.A. 1998 Supp. 44-501(c) states:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

Claimant's 15-year history of back problems supports a finding that claimant has a 5 percent impairment which preexisted this injury. In deducting the 5 percent impairment from claimant's 20 percent whole body functional impairment, and utilizing the combined values charge in the AMA Guides, the Appeals Board finds claimant entitled to an award of a 15 percent functional permanent partial disability to the body as a whole for the injuries suffered on October 15, 1998.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated October 13, 2000, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Jeffrey E. King, Salina, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director